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## OPEN MEETING ITEM ORIGINAL

27

JEFF HATCH-MILLER  
MIKE GLEASON  
KRISTIN K. MAYES

## ARIZONA CORPORATION COMMISSION

BRIAN C. MCNEIL  
Executive Secretary

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AZ CORP COMMISSION  
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DATE: NOVEMBER 13, 2003

DOCKET NO: T-04144A-02-0762

TO ALL PARTIES:

Arizona Corporation Commission

DOCKETED

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Enclosed please find the recommendation of Administrative Law Judge Dwight Nodes.  
The recommendation has been filed in the form of an Opinion and Order on:

FIRST MILE SERVICES, LLC. dba  
FIRST MILE TECHNOLOGIES  
(CC&N/FACILITIES BASED)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

NOVEMBER 24, 2003

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

DECEMBER 2, 2003 and DECEMBER 3, 2003

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Secretary's Office at (602) 542-3911.

BRIAN C. MCNEIL  
EXECUTIVE SECRETARY

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This document is available in alternative formats by contacting Yvonne McFarlin, ADA Coordinator, voice phone number 602-542-3931, E-mail [YMcFarlin@cc.state.az.us](mailto:YMcFarlin@cc.state.az.us)

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 MARC SPITZER, Chairman  
4 WILLIAM A. MUNDELL  
5 JEFF HATCH-MILLER  
6 MIKE GLEASON  
7 KRISTIN K. MAYES

8 IN THE MATTER OF THE APPLICATION OF  
9 FIRST MILE SERVICES, LLC dba FIRST MILE  
10 TECHNOLOGIES FOR A CERTIFICATE OF  
11 CONVENIENCE AND NECESSITY TO PROVIDE  
12 RESOLD LONG DISTANCE, RESOLD LOCAL  
13 EXCHANGE AND FACILITIES-BASED LOCAL  
14 EXCHANGE TELECOMMUNICATIONS  
15 SERVICES.

DOCKET NO. T-04144A-02-0762

DECISION NO. \_\_\_\_\_

OPINION AND ORDER

11 DATE OF HEARING: October 7, 2003

12 PLACE OF HEARING: Phoenix, Arizona

13 ADMINISTRATIVE LAW JUDGE: Dwight D. Nodes

14 APPEARANCES: Mr. Michael J. Farmer, Chief Operating Officer, on  
15 behalf of FirstMile Services, L.L.C.; and

16 Mr. Jason Gellman, Staff Attorney, Legal Division, on  
17 behalf of the Utilities Division of the Arizona  
18 Corporation Commission.

19 **BY THE COMMISSION:**

20 \* \* \* \* \*

21 Having considered the entire record herein and being fully advised in the premises, the  
22 Commission finds, concludes, and orders that:

FINDINGS OF FACT

23 1. On October 7, 2002, First Mile Services, LLC, dba First Mile Technologies ("First  
24 Mile" or "Applicant") filed with the Commission an application for a Certificate of Convenience and  
25 Necessity ("Certificate") to provide resold long distance and facilities-based and resold local  
26 exchange telecommunications services within the State of Arizona. The application petitioned the  
27 Commission for determination that its proposed services should be classified as competitive.

28 2. On September 22, 2003, Applicant docketed a Notice of Filing of Affidavits of

1 Publication that complies with Commission rules.

2 3. First Mile is a foreign limited liability company organized under the laws and  
3 jurisdiction of the District of Columbia, and is authorized to do business in Arizona.

4 4. On August 6, 2003, the Commission's Utilities Division Staff ("Staff") filed its Staff  
5 Report, which recommended approval of the application and included a number of additional  
6 recommendations.

7 5. On August 15, 2003, a Procedural Order was issued setting this matter for hearing on  
8 October 7, 2003, and setting various procedural deadlines.

9 6. On October 7, 2003, a full public hearing in this matter was held as scheduled.  
10 Applicant's chief operating officer, Michael J. Farmer, appeared telephonically on behalf of First  
11 Mile. Staff appeared and was represented by counsel. At the conclusion of the hearing, the  
12 Administrative Law Judge took the matter under advisement and informed the parties that a  
13 Recommended Opinion and Order would be prepared for the Commissioners' consideration.

14 7. Applicant currently operates only in Indiana serving "greenfield" residential  
15 subdivisions. First Mile's business model is to lay cable in new subdivisions in joint utility trenches  
16 thereby enabling Applicant to provide a fiber coaxial network as an alternative to the incumbent local  
17 exchange company.

18 8. Applicant has the technical capability to provide the services that are proposed in its  
19 application.

20 9. Currently there are several incumbent providers of local exchange and interexchange  
21 services in the service territory requested by Applicant, and numerous other entities have been  
22 authorized to provide competitive local and interexchange services in all or portions of that territory.

23 10. It is appropriate to classify all of Applicant's authorized services as competitive.

24 11. The Staff Report stated that Applicant has no market power and the reasonableness of  
25 its rates would be evaluated in a market with numerous competitors.

26 12. According to Staff, First Mile submitted the unaudited, financial statements for its  
27 parent company, First Mile Technologies, Inc, for the year ending December 31, 2002. These  
28 financial statements list assets of \$3.0 million, negative equity of \$515,309, and a net loss of \$2.2

1 million.

2           13.    The Application states that First Mile collects advances and/or deposits from its  
3 customers.

4           14.    Staff recommends that First Mile's application for a Certificate to provide competitive  
5 facilities-based and resold local exchange telecommunications services be granted subject to the  
6 following conditions:

- 7           (a)    that, unless it provides services solely through the use of its own facilities,  
8 First Mile be ordered to procure an Interconnection Agreement, within 365  
9 days of the effective date of the Order in this matter or 30 days prior to the  
10 provision of service, whichever comes first, that must remain in effect until  
11 further order of the Commission, before being allowed to offer local exchange  
12 service;
- 13           (b)    that First Mile be ordered to file with the Commission, within 365 days of the  
14 effective date of the Order in this matter or 30 days prior to the provision of  
15 service, whichever comes first, its plan to have its customers' telephone  
16 numbers included in the incumbent's Directories and Directory Assistance  
17 databases;
- 18           (c)    that First Mile be ordered to pursue permanent number portability  
19 arrangements with other LECs pursuant to Commission rules, federal laws and  
20 federal rules;
- 21           (d)    that First Mile be ordered to abide by and participate in the AUSF mechanism  
22 instituted in Decision No. 59623, dated April 24, 1996 (Docket No. RT-  
23 00000E-95-0498);
- 24           (e)    that First Mile be ordered to abide by the quality of service standards that were  
25 approved by the Commission for Qwest in Docket No. T-0151B-93-0183;
- 26           (f)    that in areas where it is the sole provider of local exchange service facilities,  
27 First Mile be ordered to provide customers with access to alternative providers  
28 of service pursuant to the provisions of Commission rules, federal laws and  
federal rules;
- (g)    that First Mile be ordered to certify, through the 911 service provider in the  
area in which it intends to provide service, that all issues associated with the  
provision of 911 service have been resolved with the emergency service  
providers within 365 days of an Order in this matter or 30 days prior to the  
provision of service, whichever comes first, which certification must remain in  
effect until further Order of the Commission;
- (h)    that First Mile be ordered to abide by all the Commission decisions and  
policies regarding CLASS services;
- (i)    that First Mile be ordered to provide 2-PIC equal access;
- (j)    that First Mile be required to notify the Commission immediately upon  
changes to its address or telephone number;

- (k) that First Mile be ordered to comply with all Commission rules, orders, and other requirements relevant to the provision of intrastate telecommunications service;
- (l) that First Mile be ordered to maintain its accounts and records as required by the Commission;
- (m) that First Mile be ordered to file with the Commission all financial and other reports that the Commission may require, and in a form and at such times as the Commission may designate;
- (n) that First Mile be ordered to maintain on file with the Commission all current tariffs and rates, and any service standards that the Commission may require;
- (o) that First Mile be ordered to cooperate with Commission investigations of customer complaints; and
- (p) First Mile be ordered to participate in and contribute to a universal service fund, as required by the Commission.

15. Staff further recommended that the Applicant be subject to the Commission's rules governing interconnection and unbundling and the 1996 Telecommunications Act and the rules promulgated thereunder. In the event that the Applicant provides essential services or facilities that potential competitors need in order to provide their services, the Applicant should be required to offer those facilities or services to these providers on non-discriminatory terms and conditions pursuant to federal laws, federal rules and state rules.

16. Staff further recommended that First Mile's application for a CC&N to provide intrastate telecommunications services should be granted subject to the following conditions:

- (a) First Mile be ordered to file conforming tariffs within 365 days from the date of an Order in this matter or 30 days prior to providing service, whichever occurs first, and in accordance with the Decision;
- (b) In order to protect First Mile's customers:
  - (1) First Mile should be ordered to procure a performance bond equal to \$135,000. The minimum bond amount of \$135,000 should be increased if at any time it would be insufficient to cover prepayments or deposits collected from First Mile's customers. The bond amount should be increased in increments of \$67,500 whenever the total amount of the advances, deposits and prepayments is within \$13,500 of the bond amount;
  - (2) if First Mile desires to discontinue service, it should be required to file an application with the Commission pursuant to A.A.C. R14-2-1107;

1 (3) First Mile should be required to notify each of its local exchange customers  
2 and the Commission 60 days prior to filing an application to discontinue  
3 service pursuant to A.A.C. R14-2-1107; and any failure to do so should  
4 result in forfeiture of the Applicant's performance bond;

5 (4) First Mile should docket proof of the performance bond within 365 days of  
6 the effective date of an Order in this matter or 30 days prior to the  
7 provision of service, whichever comes first, and must remain in effect until  
8 further Order of the Commission;

9 (5) if, at some time in the future, First Mile does not collect from its customers  
10 an advance, deposit and/or prepayments, Staff recommends that First Mile  
11 be allowed to file a request for cancellation of the resold long distance  
12 portion of its established performance bond. Such request should be filed  
13 with the Commission for Staff review. Upon receipt of such filing and  
14 after Staff review, Staff will forward its recommendation to the  
15 Commission; and

16 (c) If any of the above timeframes are not met, that First Mile's CC&N should  
17 become null and void without further Order of the Commission and no  
18 extensions for compliance should be granted.

19 17. In its Staff Report, Staff stated that based on information obtained from the Applicant,  
20 it has determined that First Mile's fair value rate base is zero, and is too small to be useful in setting  
21 rates. Staff further stated that in general, rates for competitive services are not set according to rate of  
22 return regulation, but are heavily influenced by the market. Staff recommended that the Commission  
23 not set rates for First Mile based on the fair value of its rate base.

24 18. The rates to be ultimately charged by First Mile will be heavily influenced by the  
25 market. Because of the nature of the competitive market and other factors, a fair value analysis is not  
26 necessarily representative of the company's operations.

27 19. Staff stated that First Mile lacks the market power to adversely affect the  
28 telecommunications market by either restricting output or raising prices. Also, Staff has  
recommended that First Mile's services be classified as competitive and thus subject to the flexible  
pricing authority allowed by the Commission's Competitive Telecommunications Services rules.  
Staff believes that these two factors, lack of market power and the competitive marketplace for the  
services First Mile proposes to offer, support the conclusion that a fair value analysis is not

1 necessarily representative of the company's operations, and that the rates charged by First Mile will  
2 be reasonable.

3 20. Staff's recommendations, as set forth herein, are reasonable.

4 21. First Mile's fair value rate base is determined to be zero for purposes of this  
5 proceeding.

6 **CONCLUSIONS OF LAW**

7 1. Applicant is a public service corporation within the meaning of Article XV of the  
8 Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

9 2. The Commission has jurisdiction over Applicant and the subject matter of the  
10 application.

11 3. Notice of the application was given in accordance with the law.

12 4. A.R.S. § 40-282 allows a telecommunications company to file an application for a  
13 Certificate to provide competitive telecommunications services.

14 5. Pursuant to Article XV of the Arizona Constitution, as well as the Arizona Revised  
15 Statutes, it is in the public interest for Applicant to provide the telecommunications services set forth  
16 in its application.

17 6. Applicant is a fit and proper entity to receive a Certificate authorizing it to provide  
18 competitive facilities-based and resold local exchange and resold interexchange telecommunications  
19 services in Arizona as conditioned by Staff's recommendations.

20 7. The telecommunications services that the Applicant intends to provide are competitive  
21 within Arizona.

22 8. Pursuant to Article XV of the Arizona Constitution as well as the Competitive Rules,  
23 it is just and reasonable and in the public interest for Applicant to establish rates and charges that are  
24 not less than the Applicant's total service long-run incremental costs of providing the competitive  
25 services approved herein.

26 9. Staff's recommendations, as set forth herein, are reasonable and should be adopted.

27 10. First Mile's competitive rates, as set forth in its proposed tariffs, are just and  
28 reasonable and should be approved.

**ORDER**

IT IS THEREFORE ORDERED that the application of First Mile Services, LLC, dba First Mile Technologies, for a Certificate of Convenience and Necessity for authority to provide competitive facilities-based and resold local exchange, and resold interexchange telecommunications services in Arizona shall be, and is hereby, granted, conditioned upon First Mile's timely compliance with the following three Ordering Paragraphs.

IT IS FURTHER ORDERED that First Mile Services, LLC, dba First Mile Technologies, shall file conforming tariffs in accordance with this Decision within 365 days of this Decision or 30 days prior to providing service, whichever comes first.

IT IS FURTHER ORDERED that First Mile Services, LLC, dba First Mile Technologies, shall procure a performance bond equal to \$135,000 the earlier of 365 days from the effective date of this Order or 30 days prior to the commencement of service. The minimum bond amount of \$135,000 shall be increased if, at any time, it would be insufficient to cover prepayments or deposits collected from the Applicant's customers. The bond amount shall be increased in increments of \$67,500. This increase shall occur when the total amount of the advances, deposits, and prepayments is within \$13,500 of the bond amount.

IT IS FURTHER ORDERED that First Mile Services, LLC, dba First Mile Technologies, shall comply with all of the Staff recommendations set forth in the above-stated Findings of Fact and Conclusions of Law.

IT IS FURTHER ORDERED that if First Mile Services, LLC, dba First Mile Technologies, fails to meet the timeframes outlined in the Ordering Paragraphs above, that the Certificate of Convenience and Necessity conditionally granted herein shall become null and void without further Order of the Commission.

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IT IS FURTHER ORDERED that if First Mile Services, LLC, dba First Mile Technologies, fails to notify each of its customers and the Commission at least 60 days prior to filing an application to discontinue service pursuant to A.A.C. R14-2-1107, that in addition to voidance of its Certificate of Convenience and Necessity, First Mile's performance bond shall be forfeited.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN	COMMISSIONER	COMMISSIONER
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CHAIRMAN	COMMISSIONER
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IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this \_\_\_\_ day of \_\_\_\_\_, 2003.

\_\_\_\_\_  
BRIAN C. McNEIL  
EXECUTIVE SECRETARY

DISSENT \_\_\_\_\_

DISSENT \_\_\_\_\_  
DDN:dap

1 SERVICE LIST FOR: FIRST MILE SERVICES, LLC dba FIRST MILE  
2 TECHNOLOGIES

3 DOCKET NO.: T-04144A-02-0762

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